ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Open Network Architecture Tariffs of US West Communications, Inc.	)	CC Docket No. 94-128
	)	
	)	

APPLICATION FOR REVIEW
OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby applies for review by the full Commission, pursuant to Section 1.115 of the Commission's Rules and Regulations, of the Procedural Matters related to proprietary materials and confidentiality decided in the Common Carrier Bureau's Order Designating Issues for Investigation, Open Network Architecture Tariffs of US West Communications, Inc., CC Docket No. 94-128, DA 94-1236 (released Nov. 8, 1994) (USWC Designation Order). The confidentiality and redaction procedures established in the USWC Designation Order for the investigation of US West's ONA tariff incorporate the same flawed and inadequate disclosure and redaction procedures set forth in the SCIS Disclosure proceeding[1/] and used in the investigation of the ONA tariffs of all of the other BOCs in the ONA Tariff Investigation.[2/]

1/ Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, Memorandum Opinion and Order, 7 FCC Rcd. 1526 (CCB 1992) (SCIS Disclosure Order), aff'd, Order, 9 FCC Rcd. 180 (1993) (SCIS Disclosure Review Order), pet. for recon. pending (flied Jan. 14, 1994).

2/ Open Network Architecture Tariffs of Bell Operating Companies, CC Dkt. No. 92-91, Order, 9 FCC Rcd. 440 (1993) (ONA Final Order), pet. for recon. pending (filed Jan. 14, 1994).

No. of Copies rec'd 0+4
List A B C D E

As MCI has explained in its Petitions for Reconsideration of the ONA Final Order[3/] and of the SCIS Disclosure Review Order,[4/] the "Redaction II" version of the "SCIS" cost model used by the other BOCs and made available in the ONA Tariff Investigation was as useless to intervenors as the admittedly inadequate "Redaction I," and the restrictions placed on intervenors by the Model Nondisclosure Agreement in the SCIS Disclosure proceeding were entirely unreasonable. The resulting lack of access to vital data precluded any meaningful participation in the ONA Tariff Investigation, resulting in secret ratemaking, in violation of Sections 201-05 of the Communications Act and the Administrative Procedure Act, and a violation of due process.

By repeating, in the USWC Designation Order, the same confidentiality procedures and the same level of redaction for US West's "SCM" cost model as were applied in the ONA Tariff Investigation, the Bureau has guaranteed the same disastrous results from the start. Thus, an expeditious grant of this Application is required under Section 1.115(b)(2)(i), (iii) and (v) of the Commission's Rules to prevent the statutory and constitutional violations perpetrated in the ONA Tariff Investigation. Rather than going through the charade of a pointless proceeding, the Commission should immediately correct these procedures by allowing meaningful access to a version of

---

3/ See, n.2, supra.

4/ See n.1, supra.

the US West SCM cost model that will permit intervenors to perform the sensitivity analyses that are absolutely necessary for an adequate review of US West's ONA tariff.

The Procedures Established in the USWC Designation Order

In paragraphs 18-21 of the USWC Designation Order, the Bureau sets forth the procedures to be followed with respect to confidential materials. The Bureau states that because of the similar need to protect proprietary material, it adopts procedures similar to those followed in the ONA Tariff Investigation. Accordingly, it requires US West to develop a redacted version of its SCM cost model, to be made available pursuant to a nondisclosure agreement, that "will at minimum enable intervenors to examine the effects on SCM outputs of changes in SCM inputs to the same extent as was possible with SCIS Redaction II, used in the first ONA investigation."[5/] The Bureau also requires that the nondisclosure agreement "be no more restrictive on intervenors than the agreement governing intervenors' examination of SCIS Redaction II."[6/]

These Procedures Are Utterly Inadequate for a Meaningful Tariff Investigation

By adopting the degree of redaction for the SCM cost model that was used for the SCIS model in the ONA Tariff Investigation

---

5/ USWC Designation Order at ¶¶ 18, 20.

6/ Id. at ¶ 20.

and the same degree of restrictiveness in the nondisclosure conditions placed on access to the redacted cost model and other proprietary data, the Bureau has precluded any meaningful participation by intervenors in this tariff investigation. In its Petition for Reconsideration of the SCIS Disclosure Review Order, a copy of which is attached hereto as Appendix A, MCI explained the utter uselessness of the SCIS Redaction II made available to intervenors in the ONA Tariff Investigation and the inadequacy of the access permitted by the nondisclosure conditions in that case.[7/]

1. The Unjustifiable Restrictions Imposed by the Nondisclosure Conditions

Pages 3-8 of Appendix A detail the onerous conditions placed on intervenors' access to all proprietary information, including the redacted SCIS model, in the ONA Tariff Investigation and the Commission's failure to address, in the SCIS Disclosure Review Order, MCI's previous discussion of these problems in its Application for Review of the SCIS Disclosure Order. MCI's prior Application for Review and Reply to Oppositions to Application for Review, which go into more detail as to the unconscionable conditions imposed on MCI and other intervenors in that case, are attached hereto as Appendixes B and C, respectively.

[7/] It should be noted that in Appendix A and some other prior pleadings, MCI referred to the SCIS Disclosure Review Order as the SCIS Disclosure Reconsideration Order, following the Commission's then-current nomenclature.

Conditions challenged by MCI in its prior Application for Review (Appendix B) and again in its Petition for Reconsideration (Appendix A at 3-8) included the limitation of access to one attorney and two consultants for each party, restrictions on the copying of computer data, the scope of permissible communications among intervenors and the application of all of the same restrictions to the outside auditor's report and other proprietary material as were applied to the SCIS model. Typical of the cavalier and frustrating approach to these problems was the Catch-22 dilemma created by the requirement that certain computer data may only be copied if the first copy is obtained from the Commission, together with the Commission staff's refusal to provide any such copies.[8/] As MCI explained at pages 3-8 of Appendix A, the Commission completely ignored these points in the SCIS Disclosure Review Order.[9/] Ironically, US West initially expressed no opposition to MCI's request to modify the "one-attorney, two-experts" limitation and other restrictions imposed by the nondisclosure order,[10/] making those conditions even less rational in this proceeding than they were in the ONA Tariff Investigation.

[8/] Appendix A at 8. See also Appendix B at 6-8.

[9/] See also MCI's Reply to Oppositions to its Petition for Reconsideration of the SCIS Disclosure Review Order, attached hereto as Appendix D.

[10/] See Appendix A at 5-6.

2. Redaction II Provided Insufficient Information to Perform Sensitivity Analyses

The Commission appears to be under the misapprehension that the version of the SCIS cost model made available as Redaction II in the ONA Tariff Investigation was a substantial improvement over Redaction I and enabled intervenors to perform the sensitivity analyses necessary to use the SCIS cost model to assess the reasonableness of the costing process underlying the BOCs' ONA tariff rates. See SCIS Disclosure Review Order, 9 FCC Rcd. at 181-82, ¶¶ 6-7, 10, 14. As MCI explained in Appendix A, at pages 9-15, however, its earlier Opposition to Direct Cases in the ONA Tariff Investigation had made it quite clear that Redaction II was as useless as Redaction I. With both versions, so much information was withheld that sensitivity analyses were impossible, preventing intervenors from observing the effects of changes in SCIS inputs on SCIS outputs, even for the one switch type that each intervenor was permitted to review. There was no credible record evidence to the contrary.[11/] As MCI has pointed out previously, the arbitrariness of the Commission's approach to disclosure of the SCIS cost model is compounded by its simultaneous adoption of formal complaint procedures providing for full disclosure of proprietary information obtained in discovery under a protective order.[12/]

[11/] Appendix A at 11.

[12/] See Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers, CC Docket No. 92-26, FCC 93-131 (released April 2, 1993), at ¶¶ 43-

(continued...)

Since none of the intervenors was able to perform sensitivity analyses as to any of the switch types, the Commission could not derive any insights as to the SCIS model from a comparison or overview of all of the intervenors' pleadings.[13/] The significance of the SCIS cost model and the manner in which both Redaction I and Redaction II disabled the SCIS model from performing any useful function in the ONA Tariff Investigation are more fully explained at pages 27-35 of MCI's prior Opposition to Direct Cases, attached hereto as Appendix E.

These Confidentiality Procedures Will Result in Secret Ratemaking, in Violation of the Communications Act, the Administrative Procedure Act and Constitutional Due Process

MCI has previously explained in its Petition for Reconsideration of the ONA Final Order, attached hereto as Appendix F, and its Reply to Oppositions thereto, attached hereto as Appendix G, that intervenors' inability to perform sensitivity analyses of the SCIS cost model precluded any meaningful investigation of the other BOCs' ONA tariffs, since the Commission had no way of knowing what issues might have been raised had such analyses been possible. The Commission thus has

---

[12/](...continued)
45 and Section 1.731 of the Commission's Rules and Regulations. See also Protective Order entered in American Telephone and Telegraph Co. and Craig O. McCaw Applications for Consent to Transfer of Control of Radio Licenses, File No. ENF-93-44 (released May 13, 1994). This inconsistency was noted in Appendix A at 13-14 n.14 and Appendix C at 5 n.7.

[13/] Id. at 12-13.

not the slightest idea as to whether the ONA rates are reasonable under the Communications Act. As in American Lithotripsy Society v. Sullivan, 785 Supp. 1034 (D.C.C. 1992), the "public" was denied "a chance to comment on the methodology the agency used [for ratemaking].... [T]he agency... cannot function properly without having the benefit of such comments."[14/]

The effective exclusion of intervenors from the ONA Tariff Investigation has accordingly resulted in secret and virtually unreviewed ratemaking, in violation of Sections 201-05 of the Communications Act, the Administrative Procedure Act (APA) and due process requirements.[15/] As in U.S. Lines, Inc. v. FMC, 584 F.2d 519 (D.C. Cir. 1978), "there was no... opportunity for a real dialogue or exchange of views." Such secret proceedings are not only arbitrary and capricious[16/] but also do "violence... to the basic fairness concept of due process."[17/] See also the cases discussed in Appendix G at 7-8.

Conclusion

By adopting the same inadequate, arbitrary and capricious confidentiality procedures in the USWC Designation Order was were

---

[14/] 785 F.Supp. at 1036.

[15/] It should be noted that the limited review of the cost model to be conducted by an independent auditor does not qualify as an "audit." See Appendix G at 3-4.

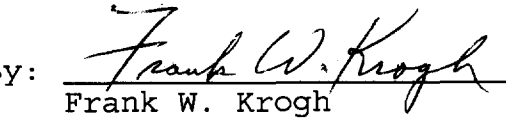
[16/] 584 F.2d at 533-35, 541-43.

[17/] Id. at 540-41.

applied to the ONA Tariff Investigation, the Bureau has ensured that its investigation of US West's ONA tariff will result in the same violations of the Communications Act, the arbitrary and capricious clause of the APA and due process requirements that were perpetrated in the SCIS Disclosure proceeding and ONA Tariff Investigation. In order to conduct a meaningful investigation of US West's ONA tariff, the Commission must therefore immediately modify the confidentiality procedures set forth in paragraphs 18-21 of the USWC Designation Order consistent with MCI's attached pleadings in the ONA Tariff Investigation and SCIS Disclosure proceeding. In particular, the extent of redaction of the SCM cost model that is made available to intervenors must be modified so that intervenors are able to perform sensitivity analyses. These procedural changes must be made quickly, in order for intervenors to participate in this investigation under the schedule established in the USWC Designation Order.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: 

Frank W. Krogh
Donald J. Elardo
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-2372

Its Attorneys

Dated: December 8, 1994

APPENDIX A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Commission Requirements for Cost	)
Support Material To Be Filed with	)
Open Network Architecture	)
Access Tariffs	)

PETITION FOR RECONSIDERATION

MCI TELECOMMUNICATIONS CORPORATION

Larry A. Blosser
Frank W. Krogh
Donald J. Elardo
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2727

Its Attorneys

Dated: January 14, 1994

TABLE OF CONTENTS

SUMMARY

MCI Telecommunications Corporation (MCI) seeks reconsideration of the SCIS Disclosure Reconsideration Order. Its defects fall into two categories: the Commission's irrational, inadequate response to MCI's criticisms, in its Application for Review of the SCIS Disclosure Order, of the onerous restrictions placed on intervenors' access to the redacted SCIS/SCM cost models and other allegedly proprietary materials (e.g., the restrictions on copying); and the lack of adequate disclosure, under any degree of access, of the substance of those cost models and other materials.

As to the first category, the SCIS Disclosure Reconsideration Order fails to address adequately MCI's points that the "one attorney-two expert" rule, the restrictions on copying and the prohibition against communication among intervenors were unjustified restrictions on intervenors' access to and use of the cost models and other materials, which restrictions were applied unevenly on an ad hoc basis and which prevented the intervenors from participating effectively in the ONA Tariff Investigation.

Even if the intervenors had been given adequate access to the cost models and other materials, however, the redactions of the cost models (Redactions I and II) and other materials make the models and materials useless to intervenors. Contrary to the Commission's assertions, intervenors were unable to perform sensitivity analyses using either redacted version of the cost

models, precluding meaningful participation in the ONA Tariff Investigation. The Commission has failed entirely to address this crucial handicap, which prevented intervenors from identifying the issues that would have to be reviewed to assure reasonable rates. That intervenors were able to identify some of the more obviously suspicious problems with the ONA tariffs does not demonstrate that the redacted SCIS/SCM cost models were at all useful, as the Commission seems to believe.

The Commission has also failed to explain why confidentiality requirements in a protective order would not be effective here. Such provisions are used in a wide variety of commercial disputes in various fora, including the Commission's own formal complaint proceedings, to protect competitively sensitive material. The Commission's assumption, without explanation, that such provisions would be ineffective here is both insulting to intervenors and their counsel and arbitrary and capricious.

Finally, the inadequate disclosure authorized by the SCIS Disclosure Order and SCIS Disclosure Reconsideration Order has resulted in unprecedented secret ratemaking, in violation of the Communications Act, the Administrative Procedure Act and constitutional due process requirements. The SCIS Disclosure Reconsideration Order should therefore be reconsidered so that MCI and other intervenors may be provided adequate disclosure of the SCIS/SCM cost models and other materials necessary for meaningful participation in the ONA Tariff Investigation.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs	)

TO: The Commission

PETITION FOR RECONSIDERATION

Pursuant to Section 1.106 of the Commission's Rules and Regulations, 47 C.F.R. § 1.106, MCI Telecommunications Corporation (MCI) hereby moves for reconsideration of the Commission's SCIS Disclosure Reconsideration Order in the above-captioned proceeding[1] denying MCI's Application for Review of the SCIS Disclosure Order.[2] The inadequate disclosure authorized by those orders has prevented MCI's and other intervenors' meaningful participation in the ONA Tariff Investigation,[3] thus violating the Communications Act of 1934, the Administrative Procedure Act and constitutional due process requirements.

---

[1]/ FCC 93-531 (released Dec. 15, 1993).

[2]/ 7 FCC Rcd. 1526 (Com. Car. Bur. 1992).

[3]/ Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91.

Introduction

MCI has discussed, in its Application for Review of the SCIS Disclosure Order and other pleadings, the unjustifiable restrictions placed on intervenors' access to and use of the redacted computerized cost models used by the Bell Operating Companies (BOCs) to calculate costs in setting their Open Network Architecture (ONA) tariff rates. MCI has also explained, in its Opposition to Direct Cases, at 27-35, filed in the ONA Tariff Investigation on Oct. 16, 1992, and other pleadings, why the versions of the cost models (referred to as "SCIS/SCM") and other "competitively sensitive information" that were ultimately disclosed to intervenors were totally useless.

In its SCIS Disclosure Reconsideration Order, however, the Commission justifies the inadequate disclosure provided to MCI and the other intervenors on grounds so at odds with the record and so utterly irrational that the public interest requires that MCI lend whatever additional assistance may be necessary to clear up the Commission's evident confusion. The Commission's rationale is so surprising, in light of the record, that some repetition is necessary simply as a reality reference.

The Commission's Errors

The defects in the SCIS Disclosure Reconsideration Order fall into two categories: the Commission's irrational responses to MCI's criticisms in its Application for Review of

the artificially restricted access to the redacted SCIS/SCM models and other materials afforded to the intervenors; and the lack of adequate disclosure, under any degree of access, of the substance of the cost models and other necessary materials.[4]

A. The Commission Fails to Address Rationally MCI's Criticisms as to the Degree of Access Afforded to Intervenors by the Restrictions in the "Model Nondisclosure Agreement"

In upholding the SCIS Disclosure Order, the Commission focuses exclusively on the Redaction II software and the need to protect the vendor proprietary material therein. Even as applied to Redaction II software, however, the restrictions on intervenor access and participation were patently unreasonable ab initio. As reflected in the record of this proceeding, the BOCs and Bellcore, with the support of switch vendors and the acquiescence of Commission staff, engaged in substantial "leveraging" of these already onerous restrictions to the detriment of meaningful intervenor participation. For instance, it was only through a great deal of combined intervenor effort that the BOCs retreated, and then only modestly, from initial limits on the locations at which the Redaction II software could be inspected on-site and the number of days that each member of the one-attorney two-expert teams could review that software.

---

[4]/ When MCI filed its Application for Review, of course, it had no idea how limited Redaction II, made available months later, would be.

On the whole, the record reflects not that the BOCs were "willing to be flexible" (SCIS Disclosure Reconsideration Order at ¶9, n. 25), but rather that they would spare no effort to make intervenor participation both expensive and inconvenient, short of patent non-compliance with a direct order of the Commission. Notwithstanding MCI's Application for Review and the numerous intervenor pleadings in support thereof, the BOCs did not agree to any significant relaxation of the original onerous restrictions; on the contrary, they insisted that intervenors sign a "Notice of Compliance" containing an information sharing restriction before obtaining access to the Redaction II software. Finally, the Commission's discussion, at ¶13 of the SCIS Disclosure Reconsideration Order, of the inadequacy of a nondisclosure agreement to provide sufficient protection for vendor proprietary data fails to explain why SCIS and SCM are deserving of special protection in this proceeding, whereas, in numerous state proceedings, MCI and other intervenors have obtained access to SCIS and SCM simply by executing such agreements.

Moreover, in focusing so narrowly on the Redaction II software, the Commission has totally ignored (or, at best, glossed over) the many other impediments to meaningful intervenor participation attributable to the restrictions imposed in the Model Nondisclosure Agreement (MNA), Attachment A to the SCIS Disclosure Order. By its terms, the MNA covers not only

Redaction II software but all "competitively sensitive information" disclosed in the course of this investigation. The restrictions imposed by the MNA have been applied to documentation and software related to Redactions I and II, the reports and supplemental submissions by Arthur Andersen, the independent auditor; and all pleadings containing "competitively sensitive information" as defined in the MNA. By focusing on Redaction II software, the Commission has failed to provide a rational response to the many issues raised by MCI and other intervenors with respect to the onerous restrictions embodied in the MNA.

For example, in its Application for Review MCI requested modification of the "one-attorney, two-experts" restriction and the copying provisions and requested clarification with respect to a topic addressed in the SCIS Disclosure Order but not in the MNA--the scope of permissible communication between intervenors to permit pooling of their "specialized expertise" to assist the Commission staff in analyzing the complex and voluminous materials submitted in support of the ONA access tariff submissions.

In its March 12, 1992 Opposition, US West (the only BOC with a proprietary claim to the SCM software) expressed no opposition to certain modifications or clarifications requested by MCI (e.g., the modification of the one attorney, two expert provision to permit the use of support staff), and a willingness

to consider modification of some of the other restrictions (e.g., some limited copying of "commercially sensitive materials"). US West also conceded that it had (apparently unilaterally, without consulting the switch vendors or obtaining a waiver of the SCIS Disclosure Order) modified the one-attorney provision to accommodate the pre-existing vacation plans of one of the intervenors.

One of the fundamental deficiencies in the SCIS Disclosure Reconsideration Order is the failure of the Commission to explain why it allowed onerous restrictions on intervenor access--even those abandoned by parties whose interests the restrictions were allegedly designed to protect--to persist throughout the (so far, two-year) course of this investigation. Even assuming, for the sake of argument, that all of the restrictions upheld in the SCIS Disclosure Reconsideration Order are reasonably necessary to protect switch vendor data contained in the Redaction II software, that provides no justification for the continuation of those same restrictions as to other "competitively sensitive materials" produced in the course of the investigation and governed by the MNA, such as the Arthur Andersen reports and pleadings.

Similarly, the Commission has failed to provide an adequately comprehensive response to MCI's request for clarification on the issue of permissible communications between intervenors; the rationale proffered in ¶¶11-12 of the SCIS

Disclosure Reconsideration Order addresses only the purported risks inherent in allowing intervenors who have seen one version of Redaction II software to "compare notes" with those who have seen a different version containing data from another switch type. Totally unexplained, for example, is the rationale for prohibiting intervenors from communicating with respect to the Andersen reports (which are also covered by the MNA, and which--at least in the redacted form provided to intervenors--contain no arguably proprietary cost data pertaining to any specific switch type).

In note 25 to the SCIS Disclosure Reconsideration Order, the Commission asserts that the willingness of several BOCs to modify restrictions "further supports the reasonableness of the restrictions." This attempted justification totally ignores the fact that--as to the vast majority of materials covered by the MNA--an intervenor would be required to obtain the unanimous consent of all parties claiming a proprietary interest in a particular document or software program (all seven BOCs, Bellcore and three switch vendors). And even if unanimous consent were obtained (an unlikely prospect given the wide-ranging responses to MCI's Application for Review), the parties should obtain a modification or waiver of the provisions of the MNA, the contents of which were prescribed in the SCIS Disclosure Order. To MCI's knowledge, apart from the one US West example cited in note 25 (an accommodation which US West subsequently

refused to extend MCI, despite a request for similar relief), no such waivers or modifications were undertaken during the nearly twenty-one months between the filing of MCI's Application for Review and the issuance of the SCIS Disclosure Reconsideration Order.

In the first sentence of paragraph 10 of the SCIS Disclosure Reconsideration Order, the Commission totally mischaracterizes an entire section of MCI's Application for Review (pp. 6-8) as "approv[ing] the Model Nondisclosure Agreement provisions governing copying." In the remainder of the paragraph and in the accompanying footnote, the Commission compounds this error by: 1) explaining the need to prohibit copying of Redaction II software, which did not exist at the time MCI's Application for Review was filed and which MCI has never sought to copy; and 2) by selectively citing in accompanying footnote 26 a portion of ¶15 of the MNA which permits copying of some materials, ignoring the "trigger provision" of ¶15--the first copy must be obtained by an intervenor from the Commission, after which additional copies may be made. It was this "trigger provision" and the Commission staff's "no-copy" policy that arose from it that was the subject of an entire section of MCI's Application for Review, which the Commission has largely ignored and otherwise mischaracterized.

B. The Disclosure Afforded to Intervenors Was so Inadequate as to Preclude Meaningful Participation in the ONA Tariff Investigation

According to the Commission, the SCIS Disclosure Order "required Bellcore and US West, in cooperation with switch vendors, to develop redacted SCIS and SCM models, which would allow intervenors to observe the models in operation, and determine their sensitivity to changes in various input data values...."[5] In the SCIS Disclosure Reconsideration Order, the Commission appears to believe that is what actually happened. In paragraph 6, the Commission states:

> The resulting second redacted SCIS model and associated procedures ("Redaction II") differ from those of the first redactions in several substantial respects, in many cases superseding procedures for which MCI sought review in its application. The information disclosed under Redaction II is much greater.... Thus, intervenors were given a more complete description of the internal methodology of SCIS. In addition, sensitive price lists for switch components are included in the SCIS model.... As a result, intervenors were able to observe the effects of changes in SCIS inputs on SCIS outputs based on the use of actual, rather than hypothetical, data to describe switches under study.

Again, the Commission states that "[s]ubsequent to the filing of MCI's application, Bellcore substantially increased the amount of information it revealed in the Redacted Model." Id. at ¶9. The Commission then goes on, in paragraph 7, to justify the restrictions placed on intervenors' access to and use of the cost

---

[5]/ Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, FCC 93-532 released Dec. 15, 1993) (ONA Investigation Final Order) at ¶9.

model--including each intervenor's restriction to data as to only one switch type--as required by "the greater disclosure of data in the second version."

In paragraph 10, the Commission also makes the claim that "[b]ecause Redaction II contains actual switch data rather than hypothetical or randomly selected figures, intervenors are able to perform actual analyses--a prime purpose of independent review." The Commission concludes, in the same vein, that

> In the ONA Investigation Final Order, which we adopt today, we conclude that the redactions did not prevent intervenors from a meaningful review of SCIS. The intervenors were able to examine the effects of changes in SCIS inputs on SCIS outputs for all the relevant SCIS inputs except negotiated price discounts. These sensitivity analyses ... enabled intervenors to raise several specific questions regarding the reasonableness of the SCIS investment studies that support rate development. The restrictions placed by Bellcore and US West on the examination of Redaction II permitted intervenors an adequate opportunity for review.... Id. at ¶14.

The problem with all of these statements and conclusions is that, other than statements about the internal validity of SCIS/SCM, they are entirely incorrect.[6] MCI made it

---

[6]/ As MCI pointed out in its Opposition to Direct Cases at 28-29, the problem here is not the internal validity of the SCIS/SCM model, but rather the inherent flexibility afforded to the analyst in the selection of inputs, thus allowing the BOCs to justify almost any calculation of costs and thus any rates. The ONA Investigation Final Order at ¶¶82-83 alludes to this distinction but fails to address the main issue presented by MCI. Because intervenors were not able to perform sensitivity analyses, they were unable to identify the full range of flexibility in the selection of inputs, and thus were unable to identify the range of issues that must be examined to assure reasonable rates.

quite clear in its Opposition to Direct Cases in the ONA Tariff Investigation that Redaction II was no better than Redaction I, and, in fact, was somewhat worse.[7] With both versions, any sensitivity analyses were "impossible,"[8] preventing meaningful participation in the tariff investigation.[9] There were no credible statements in the record contradicting MCI's observations as to Redaction I or II. There was therefore no credible support for the Commission's enthusiasm for Redaction II or its statements in the SCIS Disclosure Reconsideration Order that "intervenors were able to observe the effects of changes in SCIS inputs on SCIS outputs" (¶6; see also ¶14) or that "intervenors are able to perform actual analyses" (¶10).

MCI will explain in its Petition for Reconsideration of the ONA Investigation Final Order why that order is similarly deficient. For purposes of the instant Petition, however, it suffices that both Redactions I and II--contrary to the Commission's conclusion in the SCIS Disclosure Reconsideration Order, at ¶14--completely precluded "a meaningful review of SCIS," since intervenors were not able to "examine the effects of changes in SCIS inputs on SCIS outputs...."

The Commission's conclusion suggests that it might have

---

[7]/ See MCI Opposition to Direct Cases at 32-33. The SCIS Disclosure Reconsideration Order at ¶7 n. 16 also concedes that Redaction II contained less useful data than Redaction I.

[8]/ Id. at 32.

[9]/ Id. at 33.